

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2006-70-C

May 5, 2006

IN RE:

**Application of LMDS Holdings, Inc.)
for a Certificate of Public Convenience)
and Necessity to Provide Competitive)
Local Exchange and Interexchange)
Telecommunications in the State of)
South Carolina and for Alternative)
Regulation, and for Flexible Regulation)**

STIPULATION

This Stipulation ("Stipulation") is made by and among the Office of Regulatory Staff ("ORS") and LMDS Holdings, Inc., ("LMDS" or "the Company") (collectively referred to as the "Parties" or sometimes individually as "Party").

WHEREAS, on March 2, 2006, the Company filed its application requesting, among other things, a Certificate of Public Convenience and Necessity to provide within the state of South Carolina competitive local exchange and interexchange telecommunications services, flexible regulation for its local exchange services pursuant to Order No. 98-165 in Docket No. 97-467-C, and alternative regulation for its interexchange services pursuant to South Carolina Code § 58-9-585 (Supp.1999) as was first granted by the Commission in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C, and as modified by Order No. 2001-997 in Docket No. 2000-407-C;

WHEREAS, LMDS specifically intends to focus on deploying technology to provide a core set of point-to-point transport and data services tailored to meet specific

needs of carriers, particularly the needs of commercial mobile radio service ("CMRS") providers, enterprise business customers and common carriers with high capacity point-to-point digital data communication needs. The circuit and transmission equipment LMDS has selected for deployment includes ports for both traditional time division multiplexed ("TDM") circuits as well as Internet Protocol ("IP") ports for Ethernet services. LMDS will provide its data-only broadband managed network solutions primarily through a combination of traditional wireline elements and its FCC-licensed, Local Multipoint Distribution Service ("LMDS") spectrum. The Company will provide high-capacity access alternatives to the exclusive use of existing copper and fiber optic based telecommunications services. These services will include point-to-point connectivity at speeds ranging from T1 through OC-3 levels. The Company's primary services will include Ethernet service using 10Mbps and 100Mbps interfaces and dedicated high speed Internet access. The equipment LMDS has selected for deployment includes ports for both traditional time division multiplexed ("TDM") circuits as well as Internet protocol ports for Ethernet services.

WHEREAS, at a later date, LMDS may expand its service offerings to include a broader range of products and services and, therefore, requests the Commission to certify LMDS to provide a full range of local and interexchange services.

WHEREAS, on March 8, 2006, the Public Service Commission of South Carolina (the "Commission") issued a Notice of Filing and Hearing and set a return date of April 10, 2006;

WHEREAS, the hearing in the above captioned matter is scheduled to be heard before a Hearing Examiner on May 8, 2006;

WHEREAS, the South Carolina Telephone Coalition ("SCTC") filed a Petition to Intervene in this matter dated April 10, 2006;

WHEREAS, on April 27, 2006 a stipulation between SCTC and LMDS was filed with the Commission;

WHEREAS, on April 13, 2006, LMDS filed the direct testimony of David LaFrance with the Commission;

WHEREAS, the purpose of this proceeding is to review the application filed by the Company and its request for a Certificate of Public Convenience and Necessity;

WHEREAS, since the filing of the notice, ORS has conducted a review of the technical, managerial, and financial expertise of the Company to provide such services;

WHEREAS, ORS has reviewed the application and the financial data provided by the Company, and ORS has calculated certain performance ratios based upon information provided by the Company;

WHEREAS, ORS has investigated the services to be offered by the Company and its intended customer service plans;

WHEREAS, ORS has reviewed the proposed tariffs submitted by the Company;

WHEREAS, as a result of its investigations, ORS has determined a) the Company intends to offer facilities-based and resold local exchange and interexchange telecommunications services; b) the Company does not intend to offer prepaid calling cards; c) the officers of the Company possess sufficient technical and managerial abilities to adequately provide the services applied for; d) the Company asserts it will have access to adequate funds for its operations through its parent company, XO Holdings, Inc.; e) certain revisions should be made to the Company's proposed tariffs in order to comply

with Commission statutes and regulations; f) the services provided by the Company will meet the service standards required by the Commission; g) the provision of local services by the Company will not adversely impact the availability of affordable local exchange service; h) to the extent it is required to do so by the Commission, the Company will participate in the support of universally available telephone service at affordable rates; i) the provision of local and interexchange services by the Company will not adversely impact the public interest; and j) the Company's services are not interconnected to the public switched telephone network, but in the event the lines are to be interconnected, the Company agrees it will initiate negotiations with one or more of the incumbent local exchange carriers for interconnection or for commercial agreements applicable to services to be provided in South Carolina.

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this docket.

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

- 1) The Parties agree to stipulate into the record before the Commission this Stipulation. The Parties also agree to stipulate to the pre-filed testimony of LMDS Witness David LaFrance who will be presented without cross-examination by ORS;
- 2) LMDS agrees to submit into the record before the Commission revised tariffs in accordance with ORS recommendations and to file those tariffs with both the Commission and ORS;

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3) The Parties agree that the Company should be granted a Certificate of Public Convenience and Necessity to provide facilities-based and resold local exchange and interexchange telecommunications services within the State of South Carolina;

4) ORS does not oppose the Company's request for waiver of 26 S.C. Code Ann. Regs. 103-610 (location of books and records) as the Company has set forth in Mr. LaFrance's testimony that, upon request, it will provide to the Commission and ORS expeditious access to its books and records at its expense, 103-631 (publication of directories), and any Commission rules or policies requiring a carrier to maintain its financial records in conformance with the Uniform System of Accounts ("USOA"), and the Parties agree to the reasonableness of a waiver of 26 S.C. Code Ann. Regs. 612.2.3 (Operating Area Maps);

5) ORS does not oppose the Company's request that the Commission allow it to employ a flexible local exchange rate structure as described in its application and as first authorized by the Commission in Order No. 98-165 in Docket No. 97-467-C; ORS does not oppose the Company's request that its interexchange services be subject to alternative regulation, pursuant to South Carolina Code § 58-9-585 (Supp.1999), as was first granted by the Commission in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C, and as modified by Order No. 2001-997 in Docket No. 2000-407-C;

6) Should LMDS offer prepaid debit card services in South Carolina, it will comply with the Commission's \$5,000 bond or certificate of deposit requirement associated with prepaid debit card services, and will file such an instrument with the Commission at that time.

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- 7) LMDS agrees to resell the services of only those interexchange carriers or local exchange carriers authorized to do business in South Carolina by the Commission;
- 8) When appropriate and upon request, the Company agrees to engage in good faith negotiations with non-BellSouth incumbent local exchange carriers whose networks interconnect with BellSouth at the same local tandem regarding traffic exchange;
- 9) LMDS agrees that the Company will allow an end-user of resold services to access an alternative interexchange carrier or operator service provider if the end-user expresses such a desire;
- 10) The Company agrees to file necessary financial information with the Commission and ORS for universal service fund reporting, annual reporting and/or gross receipts reporting and remit fees as applicable and appropriate;
- 11) The Company agrees to comply with South Carolina Code Section § 58-9-300 entitled "Abandonment of Service." Additionally, the Company agrees to adhere to the Federal Communication Commission rules 47 C.F.R. §§ 64.1190 and 64.1130 regarding preferred carrier freezes and the requirement that the form of the written authorization for the institution of the freeze be a separate or easily separable document. Prior to abandonment of service, the Company shall remove any preferred carrier freeze so as to enable consumers to seamlessly transfer their telephone numbers to another provider;
- 12) Should the Company become interconnected to the public switched telephone network, the Company agrees to comply with Title 23, Chapter 47 of the South

Carolina Code Annotated, which governs the establishment and implementation of a "Public Safety Communications Center" also known as "911 service." At that time, the Company agrees to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating prior to initiating local service in South Carolina and shall provide the 911 coordinator in each county and/or city with information regarding the Company's operations. Attached as Exhibit 1 to this Stipulation is a memorandum from the State 911 Office which provides contact information for the County 911 Coordinators;

13) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10(B) (added by Act 175). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

... 'public interest' means a balancing of the following:
(1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
(2) economic development and job attraction and retention in South Carolina; and
(3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Stipulation reached among the Parties serves the public interest as defined above;

14) The Parties agree to advocate that the Commission accept and approve this Stipulation in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and to take no action inconsistent with its adoption by the Commission. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Stipulation be accepted and approved by the

Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Stipulation and the terms and conditions contained herein;

15) The Parties agree that signing this Stipulation will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Stipulation in its entirety, then any Party desiring to do so may withdraw from the Stipulation in its entirety without penalty or obligation;

16) This Stipulation shall be interpreted according to South Carolina law;

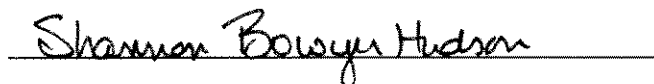
17) The above terms and conditions fully represent the Stipulation of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Stipulation by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and electronic signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Stipulation. The Parties agree that in the event any Party should fail to indicate its consent to this Stipulation and the terms contained herein, then this Stipulation shall be null and void and will not be binding on any Party.

[SIGNATURE PAGE FOLLOWS]

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WE AGREE:

Representing the South Carolina Office of Regulatory Staff

A handwritten signature in cursive script, reading "Shannon Bowyer Hudson", is written over a horizontal line.

Shannon Bowyer Hudson, Esquire
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WE AGREE:

Representing LMDS Holdings, Inc.



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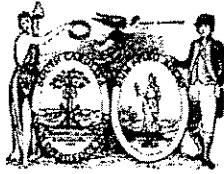
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Bobby Bowers
DIRECTOR

August 2, 2004

To: Telephone Companies New to South Carolina

In an effort to continue providing quality emergency services to the citizens of South Carolina, the State 911 Office requests that before beginning telephone services in a county, you contact the 911 Coordinator in that county. This will allow both parties to obtain important information about providing 911 services in that county. If you have already begun services, then contact the coordinator as soon as possible.

A list of County 911 Coordinators can be found on the South Carolina E911 homepage at www.ors.state.sc.us/digital/E-911.ASP. If you have any questions related to 911 in South Carolina, you may contact E911 Coordinations at the Office of Research and Statistics at 803-734-3883. The person responsible for this can also be found on the 911 homepage. Please be aware that some cities may have their own E911 systems, these are also listed on the 911 homepage. These city coordinators will need to be contacted in addition to the county coordinators.

EXHIBIT 1

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